

REMARKS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1, 3-12, 14-24, and 26-28 are pending in this application, Claim 2 having been canceled without prejudice or disclaimer, Claims 1, 12, 14, 15, 24, and 26-28 having been presently amended. Support for amended Claims 1, 12, 14, 15, 24, and 26-28 can be found, for example, in the original claims, drawings, and specification as originally filed.<sup>1</sup> No new matter has been added.

In the outstanding Office Action, Claims 1-11 and 15-23 were rejected under 35 U.S.C. § 101; Claims 1-8, 10-12, 14-24, and 26-28 were rejected under 35 U.S.C. § 102(b) as anticipated by Hill et al. (U.S. Patent No. 6,236,981; hereinafter “Hill”); and Claim 9 was rejected under 35 U.S.C. § 103(a) as unpatentable over Hill in view of Van Berkel (U.S. Patent Publication No. 2002/0190964; hereinafter “Van Berkel”).

In response to the rejection of Claims 1-11 and 15-23 under 35 U.S.C. § 101, Applicants note that Claims 1-11 and 15-23 are directed to an information processing device and recite means-plus-function terminology, and are not directed towards software *per se*.

Proper claim interpretation of a means-plus-function (35 U.S.C. § 112, 6<sup>th</sup> paragraph) element entails consideration of the structures disclosed in the specification and equivalents thereof. In determining the scope of the claims prior to determining compliance with each statutory requirement for patentability, MPEP § 2106 provides:

Office personnel are to correlate each claim limitation to all portions of the disclosure that describes the claim limitation. This is to be done in all cases, i.e., whether or not the claimed invention is defined using means or step plus function language. The correlation step will ensure that office personnel will correctly interpret each claim limitation. (emphasis added).

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<sup>1</sup> See page 22, line 16 to page 23, line 4 and page 25, line 20 to page 27, line 1 of the specification, and original Claim 2.

Thus, Applicants respectfully submit that the rejection under 35 U.S.C. § 101 of Claims 1-11 and 15-23 are improper as these claims clearly recite apparatus claim limitations. The rejection merely includes the conclusory statement “Claims 1-11 and 15-23 are directed towards software, *per se*. The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101....” Thus, Applicants respectfully submit that no express statement has been provided as to how the language of the claims have been interpreted to support the 35 U.S.C. § 101 rejection in violation of the guidelines of MPEP § 2106.

Accordingly, should such a rejection be maintained in a subsequent communication with respect to any of the aforementioned claims, Applicants respectfully request the Examiner provide an express statement on the record in accordance with MPEP § 2106 guidelines explaining how such claim terminology, such as “presenting means for presenting,” “specifying means for specifying permission to read or change the user information,” “identifying means,” and “storing means for storing the user information read” is interpreted. More specifically, how such limitations are deficient to define a useful, concrete, and tangible result. See State Street Bank & Trust Co. v. Signature Financial Group, Inc., 149 F.3d 1368, 1374, 47 (Fed. Cir. 1998) (discussing the practical application of a mathematical algorithm, formula, or calculation.).

Accordingly, Applicants respectfully request that the rejection of Claims 1-11 and 15-23 under 35 U.S.C. § 101 be withdrawn.

In response to the rejection of Claims 1-8 and 10-26 under 35 U.S.C. § 102(b) as anticipated by Hill, Applicant respectfully submits that Claim 1 recites novel features clearly not taught or rendered obvious by the applied reference.

Independent Claim 1 is directed to an information processing device including, *inter alia*:

... presenting means for presenting by wireless communication user information to be read or changed by said other information processing device;

specifying means for specifying permission to read or change the user information presented by said presenting means;

identifying means for identifying said other information processing device;

storing means for storing the user information read or changed by said other information processing device identified by said identifying means in association with said other information processing device; and

communicating means for transmitting said user information by quasi-electrostatic field communication, electromagnetic wave communication, or optical communication directly between said information processing device and said other information processing device.

Independent Claims 12, 14, 15, 24, 26, 27, and 28 recite substantially similar features as Claim 1. Thus, the arguments presented below with respect to Claim 1 are also applicable to Claims 12, 14, 15, 24, 26, 27, and 28.

Hill describes transferring a payment token from a user to a merchant platform<sup>2</sup> and that the “payment server is remote from the merchant platform and the merchant platform communicates over a communications network with the payment server. Typically, although not necessarily, all three of the user, the merchant and the payment server will be linked by internet connections.”<sup>3</sup>

However, Hill fails to disclose or suggest “communicating means for transmitting said user information by quasi-electrostatic field communication, electromagnetic wave communication, or optical communication directly between said information processing device and said other information processing device,” as recited in Applicants’ independent Claim 1. In Hill, the payment tokens are transmitted to the payment server by a

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<sup>2</sup> See Hill at column 2, lines 11-13.

<sup>3</sup> See Hill at column 2, lines 46-51.

communications network such as an internet connection. User information to be read or changed by the merchant platform (asserted to correspond to Applicants' other information processing device at page 4 of the Office Action) is not transmitted *directly* by quasi-electrostatic field communication, electromagnetic wave communication, or optical communication to the payment server in Hill. Hill only describes that payment tokens are transmitted over a communications network, user information is not directly transmitted by optical communication, electrostatic filed communication, or electromagnetic wave communication. In fact, Hill does not describe any of the communication types recited in Applicants' Claim 1.

Thus, Applicants respectfully submit that independent Claims 1, 12, 14, 15, 24, 26, 27, and 28 (and all claims depending thereon) patentably distinguish over Hill.

Accordingly, Applicants respectfully request the rejection of Claims 1-8 and 10-26 under 35 U.S.C. § 102(b) as anticipated by Hill be withdrawn.

In response to the rejection of Claim 9 under 35 U.S.C. § 103(a) as unpatentable over Hill in view of Van Berkel, Applicants note that Claim 9 is dependent on Claim 1 and is thus believed to be patentable for at least the reasons discussed above. Further, Applicants respectfully submit that Van Berkel fails to cure any of the above-noted deficiencies of Hill. Accordingly, Applicants respectfully request that the rejection of Claim 9 under 35 U.S.C. § 103(a) as unpatentable over Hill in view of Van Berkel be withdrawn.

Consequently, in view of the present amendment, and in light of the above discussion, the pending claims as presented herewith are believed to be in condition for formal allowance, and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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